

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
Clerk's Office
USDC, Mass.
Date 2/11/05
By P.O.W.
Deputy Clerk

VERMONT MUTUAL INSURANCE COMPANY
as subrogee of TIMOTHY D. STEIN and
WAYNE ROLF
89 State Street
Montpellier, VT 05601

Plaintiff,

v.

DAVID'S FLOOR SERVICE, INC.
35 Osgood Street
Somerville, MA 02143,

and

MIN DANG, d/b/a
DAVID'S FLOOR SERVICE
35 Osgood Street
Somerville, MA 02143,

Defendants.

CIVIL ACTION

NO.

05-cv-10307 JLT

JURY TRIAL DEMANDED

RECEIPT # 62174
AMOUNT \$ 250.00
SUMMONS ISSUED 2
LOCAL RULE 4.1 -
WAIVER FORM -
MCF ISSUED -
BY DPTY. CLK. M.P.
DATE 3/16/05

MAGISTRATE JUDGE

MJB

COMPLAINT

Plaintiff, Vermont Mutual Insurance Company, by and through its counsel, Patrick J. Loftus, III, and Cozen O'Connor, upon information and belief, hereby avers, as follows:

THE PARTIES

1. At all times material hereto, Plaintiff, Vermont Mutual Insurance Company [hereinafter "Vermont Mutual"], was a corporation organized and existing under the laws of the State of Vermont, with its principal place of business located in Montpelier, Vermont.

2. At all times material hereto, Plaintiff Vermont Mutual was engaged in the business of issuing property insurance and was duly authorized to issue policies of insurance within the Commonwealth of Massachusetts.

3. At all times material hereto, Defendant, David's Floor Service, Inc. was a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business in Somerville, Massachusetts.

4. At all times material hereto, Defendant Min Dang, was a resident of the Commonwealth of Massachusetts, who did business as David's Floor Service.

JURISDICTION AND VENUE

5. The jurisdiction of this Court is proper pursuant to 28 USC §1332 as this action is between citizens of different states and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

6. Venue is proper in this district pursuant to 28 USC §1391 as the events or omissions giving rise to the claims at issue occurred within this district and defendants are subject to personal jurisdiction within the district.

FACTUAL ALLEGATIONS

7. At all times material hereto, Timothy D. Stein and Wayne Rolf owned the property located at 4 Foscett Street, Somerville, Massachusetts.

8. At all times material hereto, Plaintiff Vermont Mutual insured Timothy D. Stein and Wayne Rolf's property interests at 4 Foscett Street, Somerville, Massachusetts [the "property"].

9. At all times material hereto, Defendant David's Floor Service, Inc. and/or Ming Dang, d/b/a David's Floor Service [hereinafter collectively "David's Flooring"] was engaged in the business of installing and refinishing flooring.

10. Prior to September 2, 2004, Defendants David's Flooring provided flooring services and/or refinished flooring at the property.

11. On September 2, 2004, during defendants' flooring work, an explosion occurred, thereby causing extensive damage to the property.

12. Given the damage, Timothy D. Stein and Wayne Rolf submitted a claim to Plaintiff Vermont Mutual and, pursuant to the terms and condition of its policy of insurance, Plaintiff Vermont Mutual has paid to Timothy D. Stein and Wayne Rolf an amount in excess of \$75,000, representing the fair and reasonable value and cost of the resulting damage, as covered under the applicable policy.

13. To the extent of its payments, Plaintiff Vermont Mutual is subrogated to the rights of its insureds, Timothy D. Stein and Wayne Rolf.

COUNT I – NEGLIGENCE
DEFENDANT DAVID'S FLOOR SERVICE, INC.

14. Plaintiff incorporates the proceeding paragraphs, by reference.

15. The explosion and fire were caused by the negligence, carelessness, recklessness and/or negligent omissions of Defendant David's Floor Service Inc., acting by and through its agents and employees, acting with the scope and course of their employment, in:

- a) failing to safely and properly provide its services;
- b) causing or allowing an excessive build-up of combustible vapors or fumes;
- c) failing to prevent the creation of dangerous conditions during its services;
- d) failing to provide proper and adequate warnings and instructions to its employees, client, and/or subcontractors;
- e) failing to have properly trained and/or qualified employees, clients, and/or subcontractors;
- f) otherwise causing or allowing the explosion/fire; and

- g) otherwise failing to use due care, as may be disclosed for the discovery process.

16. By reason of the above negligence, the explosion and fire occurred and resulted in extensive damage to the Timothy D. Stein and Wayne Rolf's property.

WHEREFORE, Plaintiff Vermont Mutual, as subrogee of Timothy D. Stein and Wayne Rolf, demands judgment against Defendant David's Floor Service, Inc., in an amount in excess of \$75,000; together with interest, costs, reasonable attorney's fees, interest and such other relief as the court deems just and appropriate.

COUNT II – NEGLIGENCE
DEFENDANT MING DANG, d/b/a DAVID'S FLOOR SERVICE

17. Plaintiff incorporates the proceeding paragraphs, by reference.

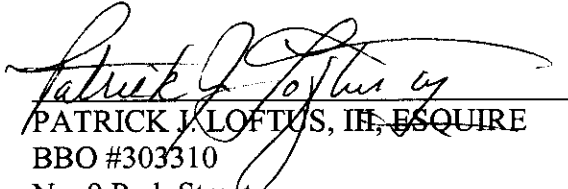
18. The explosion and fire were caused by the negligence, carelessness, recklessness and/or negligent omissions of Defendant Ming Dang, d/b/a David's Floor Service, acting by and through its agents and employees, acting with the scope and course of their employment, in:

- a) failing to safely and properly provide its services;
- b) causing or allowing an excessive build-up of combustible vapor or fumes;
- c) failing to prevent the creation of dangerous conditions during its services;
- d) failing to provide proper and adequate warnings and instructions to its employees, client, and/or subcontractors;
- e) failing to have properly trained and/or qualified employees, clients, and/or subcontractors;
- f) otherwise causing or allowing the explosion/fire; and
- g) otherwise failing to use due care, as may be disclosed for the discovery process.

19. By reason of the above negligence, the explosion and fire occurred and resulted in extensive damage to the Timothy D. Stein and Wayne Rolf's property.

WHEREFORE, Plaintiff Vermont Mutual, as subrogee of Timothy D. Stein and Wayne Rolf, demands judgment against Defendant Ming Dang, d/b/a David's Floor Service, in an amount in excess of \$75,000; together with interest, costs, reasonable attorney's fees, interest and such other relief as the court deems just and appropriate.

Plaintiff Vermont Mutual Insurance Company
a/s/o Timothy D. Stein and Wayne Rolf,
By Its Attorneys,


PATRICK J. LOFTUS, III, ESQUIRE
BBO #303310
No. 9 Park Street
Suite 500
Boston, MA 02108
(617) 723-7770

CO-COUNSEL:
James P. Cullen, Jr., Esquire
COZEN O'CONNOR
1900 Market Street
The Atrium - Third Floor
Philadelphia, PA 19103
(215) 665-4102

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) VERMONT MUTUAL INSURANCE COMPANY a/s/o TIMOTHY D. STEIN and WAYNE ROLF V. DAVID'S FLOOR SERVICE, INC.
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- | | | |
|-------------|------|---|
| <u> </u> | I. | 160, 410, 470, R-23, REGARDLESS OF NATURE OF SUIT. |
| <u> </u> | II. | 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950. |
| <u>X</u> | III. | 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891. |
| <u> </u> | IV. | 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900. |
| <u> </u> | V. | 150, 152, 153. |
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).
n/a
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
n/a
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? n/a
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403) _____
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? n/a
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES No OR IN THE WESTERN SECTION (BERKSHIRE FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). YES No
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES No (a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? Eastern (Middlesex Cty)
9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Somerville, MA
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION _____ OR WESTERN SECTION _____

FILED
Clerk's Office
USDC, Mass.
Date 2/11/05
By AO-KA
Deputy Clerk

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME

PATRICK J. LOFTUS, III

ADDRESS

9 PARK STREET, SUITE 500 BOSTON, MA 02108

TELEPHONE NO.

617-723-7770

(Category form - 09/92)

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

VERMONT MUTUAL INSURANCE COMPANY
a/s/o TIMOTHY D. STEIN and
WAYNE ROLF

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Washington
(EXCEPT IN U.S. PLAINTIFF CASES) (VT)

DEFENDANTS

DAVID'S FLOOR SERVICE, INC.
and
MIN DANG d/b/a DAVID'S FLOOR SERVICE

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Middlesex (MA)
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

PATRICK J. LOFTUS, III
LAW OFFICES OF PATRICK J. LOFTUS, III
9 PARK ST. SUITE 500
BOSTON, MA 02108 617-723-7770

ATTORNEYS (IF KNOWN)

05 10307 JLT

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY:

28 USC 1332(a)(1)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 851 HIA (1395ff) <input type="checkbox"/> 852 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other		

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/9/05

SIGNATURE OF ATTORNEY OF RECORD

Patrick J. Loftus III

UNITED STATES DISTRICT COURT